

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13666 of 1994
with
SPECIAL CIVIL APPLICATION No 1632 of 1995
with
SPECIAL CIVIL APPLICATION No 2915 of 1995
with
SPECIAL CIVIL APPLICATION No 10883 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgement? - Yes
 2. To be referred to the Reporter or not? - Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? - No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - No
 5. Whether it is to be circulated to the Civil Judge?
- No
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TARAMATIBEN C. MANIYAR AND ORS.

Versus

STATE OF GUJARAT AND ORS.

Appearance:

MR GAURANG H BHATT for Petitioner in all matters

MR MUKESH PATEL, AGP for the respondents.

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 28/04/97

COMMON ORAL JUDGEMENT

These four petitions arise out of identical

circumstances involving identical issues. Hence, they are being decided and disposed of, by this common judgment.

The petitioners in all these petitions are employees or retired employees of voluntary Institutions, working for the social service. The said Institutions are receiving grant-in-aid for meeting with their financial requirements from the State Government.

The petitioners in Special Civil Application No. 13666 of 1994 are the employees of the respondent no.4 Vikas Vidyalaya, Wadhwan City in Surendranagar, a voluntary Institution, which according to the petitioners is, for the welfare and upliftment of handicapped women and children, rendering assistance to the poor destitute needy, widow orphan women, girls and children. In Special Civil Application No. 1632 of 1995, the petitioners were the employees who have been retired from the service of respondent no.4 - Shishu Mangal, Junagadh, a voluntary Institution, which is rendering help and assistance to the poor, destitute needy widow, orphan women, girls and children. Special Civil Application No. 2915 of 1995 is filed by petitioners, who are retired employees of the respondent no.4-Shri Kasturba Stri Vikas Gruh, also a voluntary Institution engaged in the like field. The petitioners in Special Civil Application No. 10883 of 1995 were the employees who have been retired from the service of the respondent no.4 - Shri Kanta Stri Vikas Gruh, Rajkot, a voluntary Institution, which according to them, is rendering the social service for the upliftment and welfare of the destitute needy widow, orphan women, girls and the children.

The relief sought for in all these cases is that, the respective employers of the petitioners are receiving 100% grant-in-aid from the State Government for running their activities, and that in the matter of benefits such as, Pension, Gratuity, Bonus, Medical Allowance, Leave Encashment etc., which are available to the employees of voluntary Institutions for Physically and Mentally Handicapped, be also made available to the employees of the Institutions like the one in which the petitioners are serving. The relief is claimed on the anvil of the Principle of parity in the matter of pay for discharging the same nature of duties and Article 14 of the Constitution of India, with the employees of institutions of physically and mentally handicapped.

The principal contention of the learned Counsel for the petitioners is that, the Government, having in

principle accepted to extend the parity in the matter of conditions of employment through the Chief Minister in the meeting of the Directors of Gujarat State Handicapped Institutions, whereunder the Chief Minister has stated that the said parity would be extended to the Institutions engaged in the field of social welfare for handicapped persons and has also assured to implement the policy by making necessary amendment in the Rules, with effect from 21st May 1992, but the same has not been given effect to, therefore, mandamus be issued to implement that assurance.

Having carefully considered the rival contentions and the material on record, I am of the opinion that, the relief claimed by the petitioners cannot be granted. The fact that the respective institutions are receiving 100% grant-in-aid is not the relevant factor to consider. Because the employer of the petitioners in each case is the instrumentality of the State makes its actions subject to judicial review on the anvil of reasonableness, fairness and free from being arbitrariness. But the right of the employees of each Institution do not travel beyond claiming a reasonable and fair treatment in accordance with the principles of Equity from the employer. By the fact alone that the employer of the petitioners in each case is the similar and is the instrumentality of the State does not give employees to claim parity with the employees of other Institutions on the ground that other Institutions are also receiving grant-in-aid from the State Government. They do not get any right to enforce the claim against the State Government to release the grant-in-aid to its employer as well on parity with other institutions for the purpose of establishing the same service conditions under its employment parallel to service conditions in other institutions. The parity in the pay scales amongst employees under different employers does not give rise to plea of discrimination in the matter of employment against every distinct employer who is a State instrumentality. The fact that the State Government has envisaged different terms and conditions of service for releasing grant-in-aid to the institutions which are in the field of welfare for physically handicapped persons than those who are generally engaged in the welfare activities for women and children does not raise an issue of discrimination, at the behest of employees of the respective institutions and their claim for treatment on the principles of equity under Article 14 does not travel beyond their employer, by looking to the terms and conditions of other employers and draw comparison therefrom. It may be a ground for raising demand to be

considered by the employer and settlement between them in accordance with law, but not an enforceable claim under Article 226 of the Constitution against the State which is merely a financial agency for the employer.

In fact, through these petitions, the petitioners are claiming indirectly to consider the case of the employer Institution at par with other institutions working in the field of social welfare for physically handicapped persons in the matter of granting aid by the State. A claim of this nature, in my opinion, is not relatable to the right of the petitioners against their employer nor any of their right against the State in the matter of reasonable treatment under Article 14 to any of its citizen. The fact whether the institutions engaged in welfare activities for physically and mentally handicapped persons should be treated at par with other institutions engaged in different fields of social welfare service for the purpose of providing terms and conditions of employees working therein, is a matter of policy which the State Government is competent to decide, but cannot be compelled to make as a policy which may be seem to be more rational and beneficial to employees like the petitioners. Policy for grant-in-aid in the present case is related to object of welfare activity which may otherwise be undertaken by a welfare state itself, but is not relatable to provide beneficial service condition to employees of such institutions. The condition for eligibility and utilisation of grant-in-aid, only incidentally takes in consideration the basic norms of employment under it, but is not primarily considered for laying down the service conditions for recipients employees. Moreover, even amongst employees working under different departments of State Government parity in pay scale and service condition is not automatic and for different departments, different service condition including difference in pay terms is permissible to be adopted.

The fact that the State Government was considering to treat the different institutions at par at one time, does not furnish any right to the petitioners to invoke the jurisdiction under Article 226 of the Constitution of India to compel the State Government to implement that policy which it did not so far decide to implement.

The petitions, therefore, fail and the same are hereby dismissed. Rule is discharged in each case with no order as to costs.

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